

08:26AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

September 30, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF BRIAN BURNS - DAY 2
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys
Federal Centre, 138 Delaware Avenue
Buffalo, New York 14202
For the Plaintiff

SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.
80 East Spring Street
Williamsville, New York 14221
And

LAW OFFICES OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.
3110 Delaware Avenue
Kenmore, New York 14217
And

OSBORN, REED & BURKE, LLP

BY: JOHN J. GILSENAN, ESQ.
120 Allens Creek Road
Rochester, New York 14618
For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR
Robert H. Jackson Federal Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann_Sawyer@nywd.uscourts.gov

* * * * *

(Excerpt commenced at 9:05 a.m.)

(Jury present.)

THE COURT: The record will reflect that all our
jurors are present.

I remind the witness that he's still under oath.

And, Mr. MacKay, you're up.

B R I A N B U R N S, having been previously duly called and
sworn, continued to testify as follows:

(CONT'D) CROSS-EXAMINATION BY MR. MacKAY:

Q. All right. Good morning, again, Agent Burns, how are
you?

A. Good morning, Mr. MacKay, I'm disappointed after last
night.

Q. So we talked on Friday about an FBI investigation into
individuals associated with the bar Gables in North Buffalo;
do you recall that?

A. That's correct.

09:06AM 1 Q. You told us the people were arrested back in 2010, 2011
09:06AM 2 timeframe, correct?

09:06AM 3 A. I think '09 and '10 maybe, without the records. But
09:06AM 4 around there, yeah.

09:06AM 5 Q. Right there. Somewhere in --

09:06AM 6 A. Absolutely.

09:06AM 7 Q. -- the '10 timeframe?

09:06AM 8 A. Yeah.

09:06AM 9 Q. And you told us those individuals were released back into
09:06AM 10 the community after the arrest, correct?

09:06AM 11 A. That's correct.

09:06AM 12 Q. And they were arrested, but they weren't charged,
09:06AM 13 correct?

09:06AM 14 A. Correct.

09:06AM 15 Q. And you'd agree with me, it's very possible that these
09:06AM 16 individuals went back into the community and talked about
09:07AM 17 their arrest to other people in the community?

09:07AM 18 A. I would say it's possible, I don't know about very
09:07AM 19 possible, but it's possible.

09:07AM 20 Q. It's something that could have happened, fair to say?

09:07AM 21 A. I would agree with that, that's something that could have
09:07AM 22 happened.

09:07AM 23 Q. Okay. It's very -- it's possible they could have told
09:07AM 24 the people at the bar they worked at, correct?

09:07AM 25 A. My experience --

Q. Not -- so the question was: Is it possible they could have done that?

MR. COOPER: Objection.

THE COURT: Overruled.

THE WITNESS: It's possible. Anything is possible.

BY MR. MacKAY:

Q. Okay. And you knew Mike Masecchia was an individual who frequented the bars in North Buffalo, correct?

A. Yes, he was known to be -- frequent those bars in North Buffalo.

Q. Okay. And to your knowledge, working on the FBI investigation, as far as you know, the FBI didn't share anything about this arrest with the public, correct?

A. As far as I know, that's correct.

Q. Okay. And in your investigation, you also don't know when Ron Serio learned about this information, correct?

A. Just what he testified in the courtroom.

Q. Okay. Now, I want to go through these charts that were produced.

MR. MacKAY: Can we pull up, Ms. Champoux, Government Exhibit 552?

BY MR. MacKAY:

Q. We'll call this the lines connection chart; is that fair?

A. That's fair.

Q. What you tried to do here is visualize some of the

09:08AM 1 connections that have been generated in this trial, correct?

09:08AM 2 A. That's correct.

09:08AM 3 Q. You based it on testimony and evidence that came in at
09:08AM 4 this trial, correct?

09:08AM 5 A. That's correct.

09:08AM 6 Q. Now, fair to say this chart is produced using some sort
09:08AM 7 of computer program, correct?

09:08AM 8 A. Yeah. I think -- I forget the name of it.

09:08AM 9 Q. Yeah, I mean, you don't sit here and draw all these lines
09:08AM 10 one by one, correct?

09:08AM 11 A. No. We, I mean, we had a paper one at the beginning that
09:08AM 12 had little sticky notes and lines, but then we had an analyst
09:08AM 13 generate it.

09:08AM 14 Q. But 552, that's in front of us in the jury, you put
09:08AM 15 information in a program and it helps you to actually
09:08AM 16 generate the final product that we see here, correct?

09:09AM 17 A. Right. Yeah. My understanding that we gave the links,
09:09AM 18 and then the computer would make the lines and angle them so
09:09AM 19 they all wouldn't overlap.

09:09AM 20 Q. Right. I mean, like, I don't have the artistic mind to
09:09AM 21 do this, I assume, you know, you didn't sit here and do the
09:09AM 22 same thing trying to freehand this whole chart?

09:09AM 23 A. No, not at all, the program did that.

09:09AM 24 Q. It's generated by -- you give the computer program,
09:09AM 25 here's the people that are connected, and it makes the chart

09:09AM 1 in the simplest form, correct?

09:09AM 2 A. That's accurate, I agree.

09:09AM 3 Q. And in doing that, you can really organize it to put, for
09:09AM 4 example, anybody in the middle, correct?

09:09AM 5 A. Yeah, we chose to put the defendant in the middle because
09:09AM 6 it was kind of the focus of the trial.

09:09AM 7 Q. Right. Because this is a trial about Joe Bongiovanni,
09:09AM 8 correct?

09:09AM 9 A. That's correct.

09:09AM 10 Q. I mean, you can reorganize this chart to put, for
09:09AM 11 example, Peter Gerace in the middle, correct?

09:09AM 12 A. We could, yes.

09:09AM 13 Q. It would reorganize the lines in some fashion, but same
09:09AM 14 program, same connections, you can generate the chart to look
09:09AM 15 like that, correct?

09:09AM 16 A. That's my understanding, I don't know how to run the
09:09AM 17 program, but --

09:09AM 18 Q. Okay. And, for example, you can choose what picture you
09:10AM 19 want to put there of Mr. Bongiovanni, correct?

09:10AM 20 A. That's correct. Well, I think we had to choose a picture
09:10AM 21 that was in evidence.

09:10AM 22 Q. Right. But, you know, ultimately, this is work product
09:10AM 23 of the FBI and the -- the prosecution, correct?

09:10AM 24 A. Yes, and HSI. Absolutely.

09:10AM 25 Q. And these charts, you began creating them before this

09:10AM 1 trial, correct?

09:10AM 2 A. I'm sorry?

09:10AM 3 Q. You began working and formulating these charts prior to

09:10AM 4 the start of this actual trial, correct?

09:10AM 5 A. Yeah, I think it was mid to late June.

09:10AM 6 Q. Yeah. Do you have any reason to disagree with me they

09:10AM 7 were first turned over to the defense sometime in like, June?

09:10AM 8 A. Or early maybe July, right around there. I would agree

09:10AM 9 with you.

09:10AM 10 Q. Yeah. Sometime prior to the July 29th date that we all

09:10AM 11 came into court to start selecting a jury; fair to say?

09:10AM 12 A. It evolved. I mean, we did that based on testimony from

09:10AM 13 a prior proceeding, and -- with the understanding that what

09:10AM 14 would come out here would be what is heard this trial, in

09:10AM 15 this courtroom.

09:10AM 16 Q. Okay. Yeah, so let's talk about that.

09:10AM 17 What you did is in determining how to create this, you

09:11AM 18 looked at what happened in a prior proceeding; correct?

09:11AM 19 A. That was our foundation to start.

09:11AM 20 Q. Right. And this chart did not exist for the prior

09:11AM 21 proceeding, correct?

09:11AM 22 A. Did not.

09:11AM 23 Q. Okay. And it might sound silly, but you didn't call us

09:11AM 24 up, you didn't call me or Mr. Singer to ask you how to make

09:11AM 25 this chart, did you?

25 Q. For example, Joe Bella, do you see him there? Circle him

09:12AM 1 here?

09:12AM 2 A. Yep.

09:12AM 3 Q. The lines coming mostly from his little bubble there,

09:12AM 4 we'll call it, those are formed from contacts in his phone,

09:12AM 5 correct?

09:12AM 6 A. Right. Mr. Bella did not testify, so we utilized the

09:12AM 7 phone extraction to pull the contacts from the -- his phone

09:12AM 8 extraction.

09:12AM 9 Q. Yeah, but that's --

09:12AM 10 A. His phone extraction that was seized by Agent Mozg.

09:12AM 11 Q. Yeah, that was my question. Joe Bella didn't testify in

09:12AM 12 this proceeding, correct?

09:12AM 13 A. That's correct.

09:12AM 14 Q. And what you used as -- I think it was exhibit, maybe one

09:12AM 15 of the 310 exhibits, that was the phone extraction that

09:12AM 16 showed his contacts, correct?

09:12AM 17 A. Yeah, I don't remember the number, but, I mean, yeah.

09:12AM 18 Q. Yeah, I don't remember the exhibit number, but, you know,

09:12AM 19 take my word, it's the extraction?

09:13AM 20 A. Yeah, I agree, that's --

09:13AM 21 Q. And that was used to generate some of those lines,

09:13AM 22 correct?

09:13AM 23 A. Definitely, yeah.

09:13AM 24 Q. And, you know, so fair to say we didn't hear testimony in

09:13AM 25 this trial about how, like, those contacts got in the phone,

09:13AM 1 correct?

09:13AM 2 A. Definitely.

09:13AM 3 Q. Okay. We didn't hear testimony about how often these

09:13AM 4 individuals called each other, correct?

09:13AM 5 A. That's correct.

09:13AM 6 Q. Okay. Now, let's look at the line between Joe Bella and

09:13AM 7 Joe Bongiovanni. Why'd you draw that line?

09:13AM 8 A. It's related to the Nancy Standish testimony.

09:13AM 9 Q. How so?

09:13AM 10 A. When she testified that they would be at the same bar in
09:13AM 11 proximity to each other.

09:13AM 12 Q. Okay. So, that line, here, is based simply because two
09:13AM 13 people were in close proximity to each other in a bar,
09:13AM 14 correct?

09:13AM 15 A. Well, I'd like to -- if I could look at that and see if
09:13AM 16 there's anything else on that, the supporting, the 3500, I
09:13AM 17 just want to review that.

09:13AM 18 Q. Well, no. I mean, for right now, my question stands, to
09:13AM 19 your recollection, how did you actually generate that line?

09:13AM 20 A. That's to my recollection. But if I had -- there might
09:13AM 21 be additional, I mean, to recall, as I mentioned it was 179
09:13AM 22 of these connections and -- in our -- in the spreadsheet we
09:14AM 23 created.

09:14AM 24 Q. Sure, yeah. So what you're referring to is a spreadsheet
09:14AM 25 that actually you used is kind of a master list to generate

1 the corrections, correct?

2 A. Correct. And it would be if somebody's testimony, if two
3 people testified to something, I would put their -- we would
4 put their names on the line. And then if there was an
5 exhibit or two, and it's quite possible that that one is just
6 the Standish testimony, but I'd want to -- I think your
7 original question was how did you generate it, so if I had
8 that, there might be additional information.

9 Q. Sure. And I'm not trying to hide anything here.

10 **MR. MacKAY:** So, Ms. Champoux, can we show the
11 witness only Government Exhibit 3633AQ?

12 **BY MR. MacKAY:**

13 Q. Can you read that?

14 A. Yeah. That -- that's -- that 3500 relates to items in
15 the paper file, the shared drive, and the --

16 Q. Well, no, I don't want you to narrate what this is
17 because it's not in evidence.

18 A. Oh, okay.

19 **MR. MacKAY:** Can we scroll down some pages,
20 Ms. Champoux? Some pages, I think we'll see it here.

21 You can keep going. Okay.

22 **BY MR. MacKAY:**

23 Q. All right. So, I think we're on page -- I think this is
24 4 of the exhibit.

25 All right. So, again, I don't want you to narrate, I

09:15AM 1 just want you to look --

09:15AM 2 A. I understand.

09:15AM 3 Q. -- and try to figure out the answer of my original

09:15AM 4 question. Why did you draw the line from Joe Bella to Joe

09:15AM 5 Bongiovanni?

09:15AM 6 A. Okay. So I did indicate that Nancy Standish, as I

09:15AM 7 mentioned, and additionally in looking at this, it refreshes

09:15AM 8 my memory that Louis Selva also testified that they had a

09:15AM 9 connection, a relationship.

09:15AM 10 Q. Okay. Now, we'll leave that up there in case you need

09:15AM 11 any review.

09:15AM 12 What we're looking at here, this chart -- well, sorry,

09:15AM 13 we're not looking at it. But what you refreshed your

09:15AM 14 recollection with was a chart, again, showing the connections

09:15AM 15 as you understood them to be based on your review of

09:15AM 16 testimony and evidence, correct?

09:15AM 17 A. You're referring to the spreadsheet?

09:15AM 18 Q. Yes, what's in front of you.

09:16AM 19 A. Yes.

09:16AM 20 Q. Okay. Now, that's not the first version of that

09:16AM 21 spreadsheet, correct?

09:16AM 22 A. No, it evolved as the trial went on, like each week,

09:16AM 23 or --

09:16AM 24 Q. So, yes. So the one you're looking at now is not the one

09:16AM 25 that you originally started with, correct?

09:16AM 1 A. That's correct.

09:16AM 2 Q. You had a prior version, and you modified that over time,
09:16AM 3 correct?

09:16AM 4 A. That's correct.

09:16AM 5 Q. And the prior version, what you started with, was based
09:16AM 6 on, again, the testimony or the evidence at the prior
09:16AM 7 proceeding, correct?

09:16AM 8 A. I would say it was our baseline. But, I mean, obviously
09:16AM 9 to make that exhibit for this trial, it had to -- all that
09:16AM 10 information had to come through the course of this trial. It
09:16AM 11 had to be introduced.

09:16AM 12 Q. Okay, so, let's take a look.

09:16AM 13 **MR. MacKAY:** Ms. Champoux, can we go back to
09:16AM 14 Government Exhibit 552?

09:16AM 15 **BY MR. MacKAY:**

09:16AM 16 Q. Okay. This guy, Mark Falzone.

09:16AM 17 A. Correct.

09:16AM 18 Q. He was a subject of investigation in -- your total
09:16AM 19 investigation that you ran, correct?

09:16AM 20 A. I'm sorry?

09:16AM 21 Q. I mean, he was a subject of investigation in this case,
09:16AM 22 correct?

09:16AM 23 A. Yeah. He was part of the Serio drug-trafficking
09:16AM 24 organization.

09:16AM 25 Q. Right. There's a line here. I don't know that I'll get

09:17AM 1 it right, but there's a line that reflects his connection to
09:17AM 2 Ron Serio, correct?

09:17AM 3 A. Yeah. They were, like, best friends, and he helped him
09:17AM 4 in the marijuana distribution, including trips to New York
09:17AM 5 and then at the residence when they offloaded the wood chips.

09:17AM 6 Q. Sure. Now, again, you sat here in court. Mark Falzone
09:17AM 7 did not testify in this proceeding, correct?

09:17AM 8 A. He did not in this proceeding.

09:17AM 9 Q. Yet, in drawing some of the lines here, you did rely on
09:17AM 10 his testimony though, correct?

09:17AM 11 A. I did not.

09:17AM 12 Q. Okay. Do you want to take a look at your sheet again?

09:17AM 13 A. Certainly.

09:17AM 14 **MR. MacKAY:** Okay. Ms. Champoux, can we go back to
09:17AM 15 Government Exhibit 3633AQ, can we go to page 9? Can you
09:17AM 16 rotate that?

09:17AM 17 **BY MR. MacKAY:**

09:17AM 18 Q. Okay. Take a look at that, and refresh your rec -- tell
09:17AM 19 me if that refreshes your recollection as to whether you
09:18AM 20 relied on Mark Falzone's testimony to produce that chart.

09:18AM 21 A. Well, that one you're referring to is Chris Baker. But
09:18AM 22 we did not use Mark Falzone's.

09:18AM 23 That was from the original version, but we did not
09:18AM 24 consider any of Mark Falzone's testimony in this trial.

09:18AM 25 Q. Okay. But you recall that in the prior versions of

charts that you produced, in the prior version -- I'm sorry, the prior version of these charts you produced, you had Mark Falzone's in a lot -- name in a lot more places; correct?

A. That's correct.

Q. And you tried to remove that where you thought the evidence in this trial satisfied that, correct?

A. That's correct.

Q. But here, ultimately in the final chart that you did use to produce the exhibit, you still left Mark Falzone's name in, correct?

MR. COOPER: Objection to the form of question. The chart that's in evidence doesn't have this index that he's being asked about, and so if we can -- I'd like to come up and argue it if we're gonna continue down this --

THE COURT: Come up and argue it.

MR. COOPER: Thanks.

(Sidebar discussion held on the record.)

THE COURT: I don't see anything wrong with the form of the question.

MR. COOPER: So the -- so the line that exists between Serio and Baker that Mr. MacKay is questioning him about, has five witnesses and in the exhibit of evidence that are in support of it. What he's pointing out, which I understand, is that Falzone's name wasn't removed from that, but the -- the form of the question is saying you used

09:19AM 1 Falzone's testimony to draw that line. There's six bases for
09:19AM 2 the line that exists between Baker and Serio.

09:19AM 3 **THE COURT:** And you can do that on redirect. You can
09:19AM 4 say that wasn't the only reason, there were other reasons as
09:19AM 5 well.

09:19AM 6 **MR. COOPER:** Okay. Understood. All right.

09:19AM 7 I'll withdraw the objection. Thank you, Judge.

09:19AM 8 (End of sidebar discussion.)

09:19AM 9 **THE COURT:** So are you withdrawing?

09:19AM 10 **MR. COOPER:** I'll withdraw the objection. Thanks,
09:19AM 11 Judge.

09:19AM 12 **MR. MacKAY:** I'm sorry, Ms. Sawyer, can you read back
09:19AM 13 the last question for us?

09:19AM 14 (The above-requested question was then read by the
09:19AM 15 reporter.)

09:20AM 16 **THE WITNESS:** On this index, yes.

09:20AM 17 **BY MR. MacKAY:**

09:20AM 18 Q. Okay.

09:20AM 19 A. The chart does not rely on Mark Falzone's testimony, as
09:20AM 20 he did not testify in this trial.

09:20AM 21 Q. Okay.

09:20AM 22 **MR. MacKAY:** All right. Ms. Champoux, can we go to
09:20AM 23 Government Exhibit 551?

09:20AM 24 **BY MR. MacKAY:**

09:20AM 25 Q. Okay. So this is another of the charts you produced?

09:20AM

1 A. That's correct.

09:20AM

2 Q. Same thing, you put Joe Bongiovanni in the middle,

09:20AM

3 correct?

09:20AM

4 A. That's correct.

09:20AM

5 Q. Because he's the defendant here, correct?

09:20AM

6 A. That's accurate.

09:20AM

7 Q. And is a fair way to summarize this, the government's

09:20AM

8 theory about what witnesses and evidence pertain to what

09:20AM

9 overt acts and Counts, correct?

09:20AM

10 A. I'm sorry?

09:20AM

11 Q. Is a fair way to summarize what this chart is trying to

09:20AM

12 impart is the government's theory on what witnesses and what

09:20AM

13 evidence pertain to what Counts and overt acts in the

09:20AM

14 indictment?

09:20AM

15 A. That's accurate.

09:20AM

16 Q. Okay. Now, I'm not going to go through all of this, but,

09:21AM

17 you know, it's fair to say there were a lot of agencies

09:21AM

18 involved in this investigation, correct?

09:21AM

19 A. A lot of witnesses from various agencies.

09:21AM

20 Q. Okay. Now, yeah, I mean, I want to clarify that. Just

09:21AM

21 because a witness came in and testified, that doesn't mean

09:21AM

22 that their agency was directly involved in the investigation

09:21AM

23 of Joe Bongiovanni, correct?

09:21AM

24 A. That's what I was alluding to, is they're witnesses, they

09:21AM

25 weren't involved in the investigation of Mr. Bongiovanni.

09:21AM 1 Q. Right. So if we go --

09:21AM 2 A. Some were, but not --

09:21AM 3 Q. If we go around the circle on the witnesses, these are

09:21AM 4 all law enforcement witnesses, correct?

09:21AM 5 A. Correct.

09:21AM 6 Q. Right. Because next to each one of these, you have the

09:21AM 7 symbols for their own agencies, correct?

09:21AM 8 A. That's correct.

09:21AM 9 Q. Now, what I was getting at with my prior question is, you

09:21AM 10 know, Mike O'Rourke, I circled him here.

09:21AM 11 A. Yes.

09:21AM 12 Q. You know, you've got his name and you got the State

09:21AM 13 Police logo above that, correct?

09:21AM 14 A. That's correct.

09:21AM 15 Q. But the State Police were not involved in investigating

09:21AM 16 Joe Bongiovanni, correct?

09:21AM 17 A. They were not.

09:21AM 18 Q. Okay. I'm just going to focus on one here.

09:22AM 19 So, you've got this line here that I'm drawing from Joe

09:22AM 20 Bongiovanni, Agent Mozg investigation of Bella, correct?

09:22AM 21 A. That's correct.

09:22AM 22 Q. And then, you know, there's another line that goes off of

09:22AM 23 that, that ultimately connects to Tom Mozg; you see that?

09:22AM 24 A. That's correct.

09:22AM 25 Q. Okay. What are you trying to embody with this series of

1 lines that connect up to Tom Mozg?

2 A. Well, it ties back, if -- I mean, if I could have a copy
3 of the indictment, I can -- that Count and those overt acts
4 that references, that supports what occurred related to his
5 testimony and -- or, his, Mr. Mozg, or Officer Mozg's
6 testimony as well as the exhibits.

7 Q. Okay. So, is it fair to say that what you're trying to
8 encapsulate with this little prong of the chart is that June
9 2016 meeting between Tom Mozg and Joe Bongiovanni, and what
10 that relates to in the indictment; is that a fair statement?

11 A. Yeah, I would feel more comfortable saying that
12 definitively if I could read that -- that overt act on that
13 Count, but --

14 Q. Sure, I'll get rid of the line.

15 A. No, I meant, I'm sorry, the indictment itself just to --
16 for the right phrase.

17 Q. Okay. Well, I'm not going to pull up the whole
18 indictment right here.

19 A. Okay.

20 Q. But, you know, for example, that's -- what we're just
21 talking about contains one portion of this case, correct?

22 A. Absolutely.

23 Q. Yeah. And, you know, again, I'll circle him, Tom Mozg,
24 you're trying to embody in this chart that he has something
25 to do with that piece of the case, correct?

09:23AM 1 A. The meeting you referred to.

09:23AM 2 Q. Yeah. Now you recall that there was another individual
09:23AM 3 besides Joe Bongiovanni and Tom Mozg present at that
09:23AM 4 June 26th meeting?

09:23AM 5 A. Special Agent Casullo, you're referring to.

09:23AM 6 Q. I'm going to circle him. He's up there?

09:23AM 7 A. That's correct.

09:23AM 8 Q. I mean, you didn't put him down here to remind the jury
09:23AM 9 that he's also involved in that same incident?

09:23AM 10 A. Well, it was -- Mozg was the individual that brought that
09:23AM 11 information to the DEA. So --

09:23AM 12 Q. Right. And when he brought it to the DEA, there was
09:23AM 13 another DEA present named Anthony Casullo, correct?

09:23AM 14 A. That's correct.

09:23AM 15 Q. But you didn't put those two together in that same area
09:23AM 16 of the chart, correct?

09:23AM 17 A. I did not.

09:24AM 18 Q. Okay?

09:24AM 19 **MR. MacKAY:** Judge, I have no further questions at
09:24AM 20 this point.

09:24AM 21 **THE COURT:** Redirect?

09:24AM 22 **MR. COOPER:** Briefly, Judge. Can I just have one
09:24AM 23 second to --

09:24AM 24 **THE COURT:** Sure.

09:24AM 25 **MR. COOPER:** Thank you.

2 Q. Special Agent Burns, were there a number of different
3 versions of this chart to try to fit everything on a piece of
4 paper like this, or a screen?
5 A. Yes, there were many versions, and it was kind of a tall
6 order to make everything fit.
7 Q. Did it become challenging during the creation of this
8 exhibit to fit all the information you were trying to fit in
9 one space?
0 A. Yes. We could not include all of the information
1 because -- for that reason.
2 Q. Okay.
3 **MR. COOPER:** Can we go back to 552 for a second,
4 please, Ms. Champoux?
5 **BY MR. COOPER:**
6 Q. You were asked some questions about whether you relied on
7 Mark Falzone's testimony from a prior proceeding in
8 generating some of the lines on this chart; do you remember
9 being asked that question?
0 A. Yes, I do.
1 Q. You described for defense counsel on cross-examination
2 that you kept an index where you documented, as this trial
3 went on, what came into evidence, which witnesses testified;
4 is that correct?
5 A. That's correct.

09:25AM 1 Q. Did Falzone testify at this trial?

09:25AM 2 A. He did not.

09:25AM 3 Q. Did you endeavor to remove him from the index where he
09:25AM 4 was referenced as a witness in support of connections on this
09:25AM 5 chart?

09:25AM 6 A. Yeah. I mean, we thought we got most of them.

09:25AM 7 Q. Okay. And, so, to the extent that Mr. MacKay pointed one
09:25AM 8 out to you here, the connection between Ron Serio and Chris
09:25AM 9 Baker, you see the line that exists?

09:25AM 10 A. Yes.

09:25AM 11 Q. Between Ron Serio and Chris Baker?

09:25AM 12 A. Yes.

09:25AM 13 Q. Okay.

09:25AM 14 **MR. COOPER:** Mr. MacKay, I'm holding a paper copy of
09:25AM 15 that index.

09:25AM 16 **MR. MacKAY:** AQ?

09:25AM 17 **MR. COOPER:** It's AQ.

09:25AM 18 **MR. MacKAY:** Okay.

09:25AM 19 **MR. COOPER:** May I approach the witness?

09:25AM 20 **THE COURT:** You may.

09:25AM 21 **BY MR. COOPER:**

09:25AM 22 Q. Look towards the bottom of that, I scribbled on it, but
09:25AM 23 it's my copy. But do you see the connection between Ron
09:25AM 24 Serio and Chris Baker?

09:25AM 25 A. Yes, I do.

09:25AM 1 Q. How many different witnesses' testimony support that
09:26AM 2 connection in your chart, not including Mark Falzone?

09:26AM 3 A. Ron Serio, R.K., J.R., Lou Selva, and Exhibit AI.

09:26AM 4 Q. Okay. So four other witnesses and an exhibit?

09:26AM 5 A. Supports that link, yes.

09:26AM 6 Q. Okay. And so when you created the index and as you
09:26AM 7 updated it throughout the trial, did you leave Falzone's name
09:26AM 8 in one -- in one cell of a giant spreadsheet?

09:26AM 9 A. Yes. A 179-line spreadsheet.

09:26AM 10 Q. Is Falzone's testimony alone the predication for the line
09:26AM 11 between Baker and Serio?

09:26AM 12 A. No. It does not support -- his testimony wasn't
09:26AM 13 considered in that.

09:26AM 14 Q. Okay. Four other witnesses, right?

09:26AM 15 A. And an exhibit, yes.

09:26AM 16 **MR. COOPER:** Okay. May I approach, Judge?

09:26AM 17 **THE COURT:** Yes, you may.

09:26AM 18 **MR. COOPER:** Thank you.

09:26AM 19 **BY MR. COOPER:**

09:26AM 20 Q. You were asked some questions also about, I think the
09:26AM 21 Gables topic, about whether people might have gone out and
09:26AM 22 told others that they got arrested and they were working as
09:27AM 23 informants, something like that; do you remember those
09:27AM 24 questions?

09:27AM 25 A. I do.

Q. In your experience working as an FBI agent, have you handled informants?

A. Yeah, hundreds.

Q. It sounds like you started to give an answer and Mr. MacKay cut you off. What were you trying to tell the jury about whether informants run around telling people they're informants?

A. Informants, I mean, it's -- informants don't want to be known. I mean, they're cooperating against friends, associates. It's dangerous. So, it's rare in my experience that they would share with anyone. I mean, sometimes they slip with a spouse or a close acquaintance. But informants don't have an incentive to disclose that they're cooperating with the government.

Q. Okay. Did you do your best on Government Exhibit 552 to assist the jury in being able to see the connections on a physical chart?

A. That was the purpose of the chart.

Q. Okay.

MR. COOPER: I have no further redirect, Judge.

MR. MacKAY: I'll do it from here, Judge.

RECROSS-EXAMINATION BY MR. MacKAY:

Q. So, Agent Burns, you just testified you did your best trying to produce these charts?

09:28AM 1 A. Well, I mean, I made -- they're accurate, I can tell you
09:28AM 2 that.

09:28AM 3 Q. Well, but you -- you told us that you thought you got
09:28AM 4 most of the references removed, but you missed one, correct?

09:28AM 5 A. And again, I, we didn't rely on that reference.

09:28AM 6 Q. Right. But I'm saying, in cross checking your work, you
09:28AM 7 made a mistake in some fashion, correct?

09:28AM 8 A. Right, I left Mark Falzone's name on the one line, yes.

09:28AM 9 Q. So you made a mistake in some fashion, correct?

09:28AM 10 A. I wouldn't say it's a mistake. I mean, the charge is
09:28AM 11 what is in evidence, not my working, the items I used to
09:28AM 12 create the chart.

09:28AM 13 Q. But you're hoping the jury relies on this chart to
09:28AM 14 convict Mr. Bongiovanni?

09:28AM 15 **MR. COOPER:** Objection as to what Mr. Burns is
09:28AM 16 hoping, Judge.

09:28AM 17 **THE COURT:** Overruled.

09:28AM 18 **THE WITNESS:** I'm sorry, what was your question?

09:28AM 19 **BY MR. MacKAY:**

09:28AM 20 Q. I said you're hoping the jury relies on this chart in
09:28AM 21 trying to convict Mr. Bongiovanni?

09:28AM 22 A. I mean, I hope they use it to examine the evidence at
09:28AM 23 trial. That's the purpose of it, was to organize it and tie
09:28AM 24 the connections.

09:28AM 25 **MR. MacKAY:** No further questions, Your Honor.

09:28AM

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MR. COOPER: I'm good. Thank you, Judge.

09:28AM

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THE COURT: Okay. You can step down, sir. Thank

09:28AM

3

you.

09:28AM

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(Witness excused at 9:28 a.m.)

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(Excerpt concluded at 9:28 a.m.)

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CERTIFICATE OF REPORTER

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In accordance with 28, U.S.C., 753(b), I

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certify that these original notes are a true and correct

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record of proceedings in the United States District Court for

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the Western District of New York on September 30, 2024.

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s/ Ann M. Sawyer

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Ann M. Sawyer, FCRR, RPR, CRR

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Official Court Reporter

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U.S.D.C., W.D.N.Y.

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EXCERPT - EXAMINATION OF BRIAN BURNS - DAY 2

SEPTEMBER 30, 2024

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